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Attorneys for Defendants FNMA and Nationstar

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

| | | |
|---------------------------|---|-----------------------------|
| DENICE IRLENE WARD, |) | Case No.: 12-33720-tmb13 |
| |) | |
| Debtor, |) | |
| |) | Adv. Proc No.: 19-03107-tmb |
| |) | |
| DENICE IRLENE WARD |) | DEFENDANTS FEDERAL NATIONAL |
| |) | MORTGAGE ASSOCIATION and |
| Plaintiff, |) | NATIONSTAR MORTGAGE LLC'S |
| |) | MEMORANDUM OF LAW AND |
| VS. |) | WITHDRAWAL OF AFFIRMATIVE |
| |) | DEFENSE |
| |) | |
| FEDERAL NATIONAL MORTGAGE |) | |
| ASSOCIATION and |) | |
| NATIONSTAR MORTGAGE LLC, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Defendants Federal National Mortgage Association (“FNMA”) and Nationstar Mortgage LLC (“Nationstar”) (collectively, “Defendants”) submit this Memorandum of Law and Withdrawal of Affirmative Defense, as ordered by the Court at the Pretrial Hearing on December 3, 2019. Based upon further review of the factual and legal background of the case, Defendants hereby withdraw the affirmative defense of lack of subject matter jurisdiction. Defendants find

that the Court's subject matter jurisdiction in this case is a discretionary matter under 28 U.S.C. §1334, and leaves the issue of subject matter jurisdiction to the Court's discretion.

MEMORANDUM OF LAW

This adversary proceeding arises out of a settlement agreement between Plaintiff and FNMA, and prior loan servicer Seterus, related to Debtor's Motion for Contempt filed in Plaintiff's Chapter 13 Bankruptcy case, U.S. Bankruptcy Court, Case No. 12-33720-PCM13. The Bankruptcy Case was closed on December 7, 2018, following the filing of the Motion for Contempt, and the case was not reopened prior to the filing of this Adversary Proceeding. However, based on the nature of the factual allegations and claims in the adversary complaint, it is not necessary for the Bankruptcy Case to be reopened in order for this Court to have subject matter jurisdiction under 28 U.S.C. §1334. See *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 905-906 (BAP 9th Cir. 1999). Rather, the Court has discretion to retain jurisdiction following the closing of the case, based on considerations of judicial economy, convenience, fairness, and comity. *Id.* Therefore, Defendants withdraw the affirmative defense of lack of subject matter jurisdiction. The exercise of subject matter jurisdiction is a matter of the Court's discretion, and Defendants leave this determination to the Court to either exercise jurisdiction or to decline jurisdiction *sua sponte*.

DATED: 01/16/20

McCarthy & Holthus, LLP

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS FEDERAL NATIONAL MORTGAGE ASSOCIATION AND NATIONSTAR MORTGAGE LLC'S MEMORANDUM OF LAW AND WITHDRAWAL OF AFFIRMATIVE DEFENSE upon the following parties in the manner indicated below on this Thursday, January 16, 2020 as follows:

VIA ECF:

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